

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EMMANUEL CHEATHAM,

Plaintiff,

vs.

DAWN JONES, *et al.*,

Defendants.

Case No.: 2:23-cv-00475

**ORDER GRANTING, IN PART,
MOTION TO DISMISS**

Pending before the Court is the Motion to Dismiss, (ECF No. 41), filed by Defendants Dawn Jones, Michelle Perkins, and William Reubart (collectively “Defendants”). Plaintiff Emmanuel Cheatham filed a Response, (ECF No. 46), to which Defendants replied, (ECF No. 48). For the reasons discussed below, the Court GRANTS, in part, and DENIES, in part, Defendants’ Motion to Dismiss.

I. BACKGROUND

This action arises out of Defendants’ delay in treating Plaintiff after he fell and injured his knee at Ely State Prison. (*See generally* First Amend. Compl. (“FAC”), ECF No. 37). In January 2022, Plaintiff injured his knee in the culinary unit. (*Id.* at 3). After the incident, he went to the prison’s medical facility and only received ibuprofen for five days. (*Id.*). Nurse Jones told Plaintiff that a provider would see Plaintiff in a week. (*Id.*). However, Plaintiff had to wait until March 2022, several months later, to see a provider. (*Id.*). Plaintiff was in “excruciating pain” the whole time. (*Id.*). Plaintiff sues Defendants Head Nurse Jones, Director of Nursing Michelle Perkins, and Associate Warden Reupert for violation of the Eight Amendment. (*Id.*). Defendants move to dismiss the FAC alleging that they are entitled to the defense of qualified immunity. (*See generally* Mot. Dismiss, ECF No. 41).

1 **II. LEGAL STANDARD**

2 Dismissal is appropriate under FRCP 12(b)(6) where a pleader fails to state a claim upon
 3 which relief can be granted. Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
 4 555 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on
 5 which it rests, and although a court must take all factual allegations as true, legal conclusions
 6 couched as factual allegations are insufficient. *Twombly*, 550 U.S. at 555. Accordingly, FRCP
 7 12(b)(6) requires “more than labels and conclusions, and a formulaic recitation of the elements
 8 of a cause of action will not do.” *Id.* “To survive a motion to dismiss, a complaint must contain
 9 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
 10 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A
 11 claim has facial plausibility when the plaintiff pleads factual content that allows the court to
 12 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This
 13 standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

14 If the court grants a motion to dismiss, it must then decide whether to grant leave to
 15 amend. The court should “freely give” leave to amend when there is no “undue delay, bad
 16 faith[,] dilatory motive on the part of the movant. . . undue prejudice to the opposing party by
 17 virtue of . . . the amendment, [or] futility of the amendment . . .” Fed. R. Civ. P. 15(a); *Foman*
 18 *v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear
 19 that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow*
 20 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

21 **III. DISCUSSION**

22 Plaintiff brings a Section 1983 claim for violation of the Eighth Amendment.
 23 Defendants move to dismiss Plaintiff’s FAC arguing that they are entitled to qualified
 24 immunity. (*See generally* Mot. Dismiss). “Qualified immunity gives government officials
 25 breathing room to make reasonable but mistaken judgments about open legal questions. When

properly applied, it protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)); *see also Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)) (“The doctrine of qualified immunity protects government officials ‘from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’”). To overcome a claim of immunity, a plaintiff must plead “facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *al-Kidd*, 563 U.S. at 735.

A. Constitutional Violation

Defendants argue that Plaintiff’s allegations fail to establish that a constitutional violation occurred. (Mot. Dismiss 5:20–21). The Eighth Amendment prohibits the imposition of cruel and unusual punishment and “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity, and decency.’” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the Eighth Amendment when he acts with “deliberate indifference” to the serious medical needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment violation, a plaintiff must satisfy both an objective standard—that the deprivation was serious enough to constitute cruel and unusual punishment—and a subjective standard—deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012), *overruled on other grounds by Peralta v. Dillard*, 744 F.3d 1076, 1082–83 (9th Cir. 2014). The official is not liable under the Eighth Amendment unless he “knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Farmer*, 511 U.S. 825 at 837. Then he must fail to take reasonable measures to abate the substantial risk of serious harm. *Id.* at 847. A government

1 official may only be held liable under Section 1983 when his own actions have caused a
2 constitutional deprivation. *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1069 (9th Cir. 2012).

3 To establish the objective standard, “the plaintiff must show a serious medical need by
4 demonstrating that failure to treat a prisoner’s condition could result in further significant injury
5 or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
6 2006). Defendants argue that there is no allegation that Plaintiff experienced any issues with
7 his knee beyond the three-month period that he was in pain. (Mot. Dismiss 7:24–28).

8 Defendants further argue that there is also no allegation that any medical professional ever
9 considered Plaintiff to have some injury that required medical attention and that there is no
10 allegation that the pain impacted Plaintiff’s ability to move around the facility or otherwise live
11 a normal prison life. (*Id.* 8:1–3). But Plaintiff alleges that he was in excruciating pain for three
12 months. (FAC at 3). This allegation makes it plausible that Plaintiff suffered unnecessary and
13 wanton infliction of pain. Prison nurse Jones also repeatedly told Plaintiff that he would see a
14 doctor which implies that a medical professional, a prison nurse, considered Plaintiff to have
15 some injury that required medical attention, i.e. a follow-up appointment with a doctor. (FAC at
16 3). Significantly, Plaintiff’s FAC is devoid of any allegations regarding how Defendants
17 Perkins and Reubart participated in any deprivation. (*See generally id.*). Thus, Plaintiff has
18 adequately plead facts to satisfy the first prong of the analysis as to Defendant Jones only.

19 Next, to satisfy the subjective standard, a plaintiff must show “(a) a purposeful act or
20 failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the
21 indifference.” *Jett*, 439 F.3d at 1096. “Indifference may appear when prison officials deny,
22 delay or intentionally interfere with medical treatment, or it may be shown by the way in which
23 prison physicians provide medical care.” *Id.* (quotations omitted). When a prisoner alleges that
24 delay of medical treatment evinces deliberate indifference, the prisoner must show that the
25 delay led to further injury. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404,

1 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more, is insufficient to state a
2 claim of deliberate medical indifference”). The Ninth Circuit has held that “an inadvertent
3 failure to provide adequate medical care, differences of opinion in medical treatment, and
4 harmless delays in treatment are not enough to sustain an Eighth Amendment claim.” *Simmons*
5 *v. G. Arnett*, 47 F.4th 927, 934 (9th Cir. 2022) (citations omitted).

6 Here, prison nurse Jones continually promised Plaintiff, but did not give him, medical
7 care for three months establishing that she delayed and denied him medical treatment. Plaintiff
8 also pleads that he was in excruciating pain for three months as a result of the delay, which
9 demonstrates that he suffered further injury because of the delay. (FAC at 3). But again,
10 Plaintiff’s FAC is devoid of any allegations regarding how Defendants Perkins and Reubart
11 participated in the deprivation. (*See generally* FAC). Accordingly, Plaintiff has plausibly
12 alleged the second prong of this analysis as to Defendant Jones only.

13 Because Plaintiff has pled adequate facts to satisfy both standards of the Eighth
14 Amendment violation test, Plaintiff has plausibly stated a claim for relief as to Defendant
15 Jones. But Plaintiff has failed to plead facts that implicate Defendants Perkins and Reubart
16 meaning they cannot be held liable for a constitutional violation. *See OSU Student Alliance*,
17 699 F.3d at 1069. The Court acknowledges that Plaintiff’s original Complaint pleaded in detail
18 how each Defendant was involved in his Eighth Amendment claim so it finds that amendment
19 would not be futile. (*See generally* FAC). Thus, Plaintiff’s claim against Defendants Perkins
20 and Reubart is DISMISSED without prejudice. Plaintiff shall have leave to amend his FAC to
21 remedy any deficiencies.

22 **B. Clearly Established**

23 Defendants next argue that if the Court concludes that the FAC states a plausible claim
24 of a violation under the Eighth Amendment, qualified immunity is still appropriate because
25 Defendants did not violate a clearly established right. (Mot. Dismiss 9:20–23). Whether the

1 right is clearly established is an objective inquiry, and it turns on whether a reasonable official
2 in the defendant’s position should have known at the time that his conduct was constitutionally
3 infirm. *Anderson v. Creighton*, 483 U.S. 635, 639–40 (1987); *Lacey v. Maricopa Cnty*, 693
4 F.3d 896, 915 (9th Cir. 2012). In other words, “[f]or a right to be clearly established, it must be
5 ‘sufficiently clear that every reasonable official would have understood that what he is doing
6 violates that right.’” *Id.* (quoting *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (per
7 curiam)) (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam)).

8 Defendants argue that nothing in this case that would have put Defendants on clear
9 notice that their actions, as alleged, were in violation of the Eighth Amendment. (Mot. Dismiss
10 9:20–23). Defendants admit that that they were at most negligent in not providing Plaintiff
11 with medical treatment for the pain in his knee for three months. (*Id.* 10:12–14). The Court
12 disagrees. It is clearly established that prison personnel are liable for deliberate indifference
13 when “a prisoner suffers a violation of his Eighth Amendment rights when he has a serious
14 medical need and prison officials ‘purposefully ignore or fail to respond to [his] pain or
15 possible medical need.’” *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992), *overruled on*
16 *other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (quotation
17 omitted); *Jett*, 439 F.3d at 1098 (“[Prison medical personnel] are liable for deliberate
18 indifference when they knowingly fail to respond to an inmate’s requests for help.”). In the
19 FAC, Plaintiff specifically alleges that prison nurse Jones continuously told that him that he
20 would see a doctor “in a week,” but did not see one for three months, despite him being in
21 excruciating pain. (FAC at 3). Thus, Plaintiff pleads facts that properly allege the “clearly
22 established” element of qualified immunity as to prison nurse Jones.

23 But Plaintiff does not plead enough facts in his FAC to overcome qualified immunity as
24 to the other named Defendants. Plaintiff alleges that “Jones *et al*” knew that he had injured his
25 knee and was in excruciating pain. (FAC at 3). Based on the other iterations of Plaintiff’s

1 complaints, the Court liberally construes the use of “Jones *et al*” to mean that all Defendants
2 knew about Plaintiff’s injury. (*See generally* Compl., ECF No. 1-1). Though Plaintiff’s
3 original Complaint pleaded in detail how each Defendant was involved in his Eighth
4 Amendment claim, his FAC does not. (*See generally* FAC). Because amendment would not be
5 futile, Plaintiff is instructed to file an amended complaint alleging in as specific detail as he can
6 how each Defendant is involved in his Eight Amendment claim.

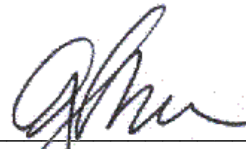
7 In sum, Plaintiff’s allegations are sufficient to state a claim of deliberate medical
8 indifference under Section 1983 as to Jones and she is not entitled to the defense of qualified
9 immunity. However, the Court agrees with Defendants that Plaintiff has not properly pled facts
10 against Defendants Perkins and Reubart in the operative FAC, and as mentioned above, they
11 are DISMISSED without prejudice. (*See* Mot. Dismiss 10:25–26).

12 **IV. CONCLUSION**

13 **IT IS HEREBY ORDERED** that Defendants’ Motion to Dismiss, (ECF No. 41), is
14 **GRANTED, in part, and DENIED, in part.** Defendants Perkins and Reubart are
15 DISMISSED without prejudice, but Jones remains as a Party.

16 **IT IS FURTHER ORDERED** that Plaintiff shall have 21 days from the date of this
17 Order to file a Second Amended Complaint remedying the deficiencies identified above.

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19 **DATED** this 24 day of February, 2025.

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23 Gloria M. Navarro, District Judge
24 United States District Court
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